

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

In the Matter of:)	
)	
Request for Review/Appeal and/or)	
Request for Waiver)	
Of the Decision of the)	
Universal Service Administrator by)	
)	
Jackson-Madison County School System)	CC Docket No. 02-6
BEN Number: 128463)	
)	
Schools and Libraries Universal Service)	
Support Mechanism)	
)	
Wireline Competition Bureau)	

REQUEST FOR REVIEW AND/OR WAIVER

Marlene H. Dortch
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

This is an appeal of two decisions by the USAC Administrator and/or waiver request of the Commission's rule regarding the frequency of discounts for Internal Connections.¹

USAC Administrator's Decisions on Appeal:

Date of Letters:	November 18, 2011
Funding Year 2010-2011:	July 1, 2010 – June 30, 2011
Applicant Name:	Jackson-Madison County School System
Billed Entity Number:	128463

¹ This Commission rule found at 47 C.F.R § 54.506(c), is often referred to as the "2-in-5" rule.

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Funding Request Numbers Appealed:

Form 471 Application Number: 765578
Funding Request Number: 2069263
and
Form 471 Application Number: 748365
Funding Request Number(s): 2056470, 2056485

USAC's Reason for Denial:

“...Your funding requests for Internal Connections was denied (or modified) because the entity(ies) associated with it has/have received Internal Connections funding for two out of the last five funding years. Each eligible school or library shall be eligible for support for Internal Connections services, except Basic Maintenance services, no more than twice in every five funding years...”

Issue:

There were no ineligible entities associated with FRN(s) 2056470, 2056485, and 2069263; therefore, USAC's reason for denial is incorrect.

Facts:

In funding year 2008-2009 Jackson-Madison County School System applied for Internal Connections for the following entities, Alexander Elementary School, BEN: 42473, Andrew Jackson Intermediate School, BEN 42489, Arlington Elementary School, BEN: 223934, Denmark Elementary School, BEN 42579, I B Tigrett Middle School, BEN: 42472, Jackson Central-Merry High School, BEN: 42469, Jackson Technology & Career Intermediate School, BEN 42471, Lincoln Elementary School, BEN: 42474, North Parkway Elementary School, BEN 42491, West Jackson Learning Center, BEN 223938, and Whitehall Elementary School, BEN: 42477. These entities were funded and received Internal Connections.

In funding year 2009-2010 Jackson-Madison County School System applied for Internal Connections for the following three entities: East Intermediate School, BEN: 42496, Isaac Lane Technology Magnet Elementary, BEN: 229792, and South Elementary School, BEN 42551. These entities were funded and received Internal Connections.

In funding year 2009-2010, Form 471 Application Number 673928, Block 4 Worksheet A No: 1090832 was used to reference the entities receiving the Internal Connections. This Worksheet inadvertently had all of the District entities listed. On March 11, 2009 a Receipt Acknowledgment Letter (RAL) correction was faxed to USAC asking for the worksheet to be changed and entities to be removed. [Attachment A]

In February of 2010 the Applicant again applied for Internal Connections, for funding year 2010-2011, for all of the entities in the District through the FRNs being appealed here (2056470, 2056485, and 2069263).

Due to questions received by the Applicant during the Program Integrity Assurance (PIA) process for the funding year 2010-2011 it became apparent that the RAL changes for the 2009-2010 Applications were not implemented correctly. On April 14, 2010 a letter (the Applicant followed the USAC's procedure as stated on its web site in a news brief of March 2, 2007) was sent to the USAC asking for the removal of the entities not receiving Internal Connections in the 2009-2010 Application. [Attachment B]

During the Program Integrity Assurance (PIA) for funding year 2010-2011, the Applicant again tried to correct the entities that were eligible for funding and supplied a number of documents reflecting the fact of eligibility. Specifically, letters from the vendors and District for FRNs from the 2009 Applications reflecting the schools that received and billed to the District for the funded Internal Connections and the PIA responses from January through July of 2011 showed which entities in the District received funding were sent to the USAC to reflect the eligibility of the entities in question. [Attachment C] None of these documents were considered by USAC and subsequently a denial for the following entities, Alexander Elementary School, BEN: 42473, Andrew Jackson Intermediate School, BEN 42489, Arlington Elementary School,

BEN: 223934, Denmark Elementary School, BEN 42579, I B Tigrett Middle School, BEN: 42472, Jackson Central-Merry High School, BEN: 42469, Jackson Technology & Career Intermediate School, BEN 42471, Lincoln Elementary School, BEN: 42474, North Parkway Elementary School, BEN 42491, West Jackson Learning Center, BEN 223938, and Whitehall Elementary School, BEN: 42477 was received.

Argument:

This is an Appeal and Waiver request. *Twice* (once through the RAL process and once in the Entity Removal Letter) the Applicant followed USAC/FCC procedures to correct ministerial errors, to no avail.

FCC precedent bolsters the correctness of Applicant's position. Consider the following FCC precedent: In reviewing the *Bishop Perry, Ann Arbor Public Schools, Archer Public Library, Nicholas County School District*, it is obvious that the point the FCC made is that honest clerical or administrative errors must not prohibit getting funds to applicants in accordance with the Congressional mandate set forth in the Telecommunications Act of 1996.

In *Bishop Perry Middle School, 06-54*, the FCC granted 196 appeals of decisions by the Universal Service Administrative Company (USAC) concerning the schools and libraries universal service support mechanism for denying funding due to certain clerical or ministerial errors in the application, *e.g.*, a failure to timely file an FCC Form 471, a failure to timely file a certification related to an FCC Form 470.

In *Ann Arbor Public Schools* the FCC permitted applicants to correct ministerial or clerical errors on their original FCC Forms 470 and 471 and other related forms or submissions to USAC district when it was only intended to serve a single elementary school. *Para 2, DA 10-2354. DA 10-2354, Ann Arbor Public Schools, Ann Arbor, MI, et al., Released: December 16, 2010*

In *Archer* the FCC said consistent with precedent, we find that the mistakes at issue here are sufficiently similar to those in the *Bishop Perry Order*; petitioners will need to amend their

original FCC Form 471 applications or Item 21 attachments submitted to USAC. As in the *Bishop Perry Order*, unintentional administrative or clerical errors can be corrected. *Archer Public Library, Archer City, TX, et al., DA 08-2378*

In *Glendale Unified School District, DA 06-244, Rel February 1, 2006*, this Commission stated [t]he Commission may waive any provision of its rules on its own motion and for good cause shown. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.” *Para 4* Applicant submits that the special circumstances here warrant a waiver.

While the FCC has affirmed USAC’s authority to put in place administrative policies to ensure prompt review of applications and prevent the undue delay of the application process, *e.g., In re Request for Review by Nicholas County School District, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., File No. SLD-220670, CC Docket Nos. 96-45, 97-21, Order, FCC Rcd 22489, 22491, DA 02-3058, para 6*, there is no authority for the USAC’s position in denying the request of April 14, 2010 [Attachment B] that since “funds had already been dispersed so the entities in question were not removed. Therefore, they are ineligible to receive funding for Priority 2.” (This denial is in reference to the April 20, 2007 issue of the USAC’s News Brief.) Overlooked is the fact that, **except for three entities set forth above, no other entity received funding in the 2009-2010 Applications; therefore, all entities were eligible for funding in the 2010-2011 Applications.**

The USAC states in a Program Integrity Assurance review “...confirmed that funds had already been dispersed so the entities in question were not removed.” If “funds dispersed” is the issue, funds were only disbursed to the three schools set forth in the Applicant’s June 7, 2011 and July 26, 2011 PIA response letters. [Attachment C]

The USAC's seminal authority is to guard against waste, fraud and abuse. Waste, fraud and abuse is not present here, only clerical/administrative errors. Form 471 Application Block 4 changes of 2009-2010 Applications were made in accordance with USAC/FCC's rules and should have been implemented by the USAC; therefore, all entities on the Form 471 Applications of 2010-2011 would have been [and are] eligible for Internal Connections funding.

Conclusion:

There were no ineligible entities in the Form 471 Applications and FRNs of funding year 2010-2011. Jackson-Madison County School System respectfully requests this appeal be granted and funds to be set aside to totally fund the requested FRNs: 2056470, 2056485, and 2069263. Or, in the alternative, a wavier be granted for 47 C.F.R § 54.506(c), and funds to be set aside to totally fund the requested FRNs: 2056470, 2056485, and 2069263.

Respectfully Submitted by:

/s/ Rosemary Enos

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See attached Letter of Authorization (LOA) [Attachment D]

January 15, 2012